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09/937,205	09/21/2001	Werner Schulz	1175/65880	6448

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EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	SCHULZ, WERNER
Examiner	Art Unit 3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 August 2003 .

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 and 3-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 21 September 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7 . 6) Other: _____ .

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "adjacent side wall (2) is folded down onto itself for abutment inner face to inner face" (claim 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, fails to provide antecedence for the embodiment wherein the "adjacent side wall (2) is folded down onto itself for abutment inner face to inner face". This is a new matter rejection.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 1 and 3-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, "the lower portions of the side walls" lack antecedence.

In claim 1, line 10, "the bottom side seams" lack antecedence.

In claim 1, line 12, "the upper portions of the side walls" lack antecedence.

In claim 1, line 14, "wall(s)" should be changed to --wall(3)--.

In claim 1, line 15, "the top side seams" lack antecedence.

In claim 3, line 6, "the adjacent bag wall" lacks antecedence.

In claim 3, line 6, it is unclear if "the adjacent bag wall (3)" refers to "the top wall (3)".

In claim 9, line 9, "to wall (3)" should be changed to --top wall (3)--.

In claim 9, line 12, "the peelable connection" lacks antecedence.

In claim 9, line 12-13, "the upper edge portion (60) of the top wall" lacks antecedence.

In claim 9, lines 13-14, "the upper edge portion (58) of the adjacent side wall" lacks antecedence.

In claim 9, lines 13-14, "the adjacent side wall" lacks antecedence.

In claim 10, line 9, "to wall (3)" should be changed to --top wall (3)--.

In claim 10, line 12, "the peelable connection" lacks antecedence.

In claim 10, line 13, "the upper edge portion (36) of one of the top wall (3) and the adjacent side wall (2)" lacks antecedence.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3, 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (see Fig. 3) in view of Heintz et al.

Watanabe discloses the claimed invention except for the walls being separate films sealed together. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the walls of the Watanabe bag from separate films, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, making the top and bottom walls of Watanabe from separate films of material would inherently result in the top and bottom walls being sealed to the side wall along transverse seams.

Watanabe discloses the claimed invention except for a heat-sealed peelable connection between the top and side wall. Heintz et al. teaches that it is known in the art to provide a heat-seal, peelable connection adjacent analogous male and female fasteners. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the male and female fasteners of Watanabe with the heat-sealed peelable connection Heintz et al., in order to hermetically seal the bag.

8. Claims 1, 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (see Fig. 3) in view of Gotoh et al.

Watanabe discloses the claimed invention except for the walls being separate films sealed together. It would have been obvious to one having ordinary skill in the art

at the time the invention was made to make the walls of the Watanabe bag from separate films, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Furthermore, making the top and bottom walls of Watanabe from separate films of material would inherently result in the top and bottom walls being sealed to the side wall along transverse seams.

Watanabe discloses the claimed invention except for a heat-sealed peelable connection between the top and side wall. Gotoh et al. teaches that it is known in the art to provide a heat-seal, peelable connection adjacent analogous male and female fasteners. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the male and female fasteners of Watanabe with the heat-sealed peelable connection of Gotoh et al., in order to hermetically seal the bag.

9. Claims 1, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohdin '109.

Rohdin '109 discloses the claimed invention; especially the upper edge portion 18 of the top wall 14 and the upper edge portion 16 of the side wall being heat-sealed together. See Figs. 6-6b. However, it is unclear if the heat-sealed connection is peelable. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the heat-sealed connection between the upper edge portions of the top and side walls of Rohdin '109 a peelable connection, since it

was known in the bag art that heat-sealed peelable connections permit relatively easy access to the bag interior and its contents without destroying the structural integrity of the bag.

Rohdin '109 discloses the claimed invention except for the top and bottom walls being separate films sealed to the side walls. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the top and bottom walls of the Rohdin '109 bag from separate films, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.. Furthermore, making the top and bottom walls of Rohdin '109 from separate films of material would inherently result in the top and bottom walls being sealed to the side wall along transverse seams.

Allowable Subject Matter

10. Claim 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Response to Arguments

11. Applicant's arguments with respect to claims 1 and 3-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 703-308-1153. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1078.



Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP